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**IN THE COURT OF CRIMINAL
APPEALS OF TEXAS**

DEONDRE JAVQUEEN JENKINS
Appellant-Respondent

v.

THE STATE OF TEXAS
Appellee-Petitioner

On Petition for Discretionary Review
Appellant's Brief on the Merits
Fourth Court of Appeals, San Antonio, Texas

Debra L. Parker
111 Soledad, Suite 300
San Antonio, Texas 78205
(210) 822 0620
State Bar No. 00794112
debraparkerlaw@gmail.com

IDENTITY OF THE PARTIES

Pursuant to TEX. R. APP. P. 68.4(f), the parties to this case are as follows:

The trial judge was The Hon. W. C. KIRKENDALL, sitting by assignment in the 186th Judicial Court, Cadena-Reeves Justice Center, 300 Dolorosa, 3rd Floor, San Antonio, Texas.

The parties in this matter are:

1. DEONDRE JAVQUEEN JENKINS, defendant in the trial court and appellant in the Fourth Court of Appeals.
2. THE STATE OF TEXAS through the Bexar County District Attorney's Office, Paul Elizono Tower, 101 W. Nueva, San Antonio, Texas, prosecuted in the trial court, appellee in the Fourth Court of Appeals and petitioned this Honorable Court for review

Trial Attorneys:

1. Defendant, DEONDRE JAVQUEEN JENKINS was represented by ROSS RODRIGUEZ, 325 S. Flores St, San Antonio, Texas 78204
2. Prosecuting the case for Nicholas "Nico" LaHood, Bexar County District Attorney, were Assistant District Attorneys DAVID LUNAN and ALESSANDRA CRANSHAW, Paul Elizondo Tower, 101 W. Neuva Street, San Antonio, Texas 78205

Appellate Attorneys in the Fourth Court of Appeals:

1. Appellant, DEONDRE JAVQUEEN JENKINS was represented by DEBRA L. PARKER, 111 Soledad, Suite 300, San Antonio, Texas 78205
2. The State of Texas, appellee was represented by NICHOLAS "NICO" LAHOOD, District Attorney, LAURA E. DURAN, Assistant District Attorneys, Paul Elizondo Tower, 101 W. Nueva Street, San Antonio, Texas 78205

Appellate Attorneys in the Court of Criminal Appeals:

1. Appellant, DEONDRE JAVQUEEN JENKINS is represented by DEBRA L. PARKER, 111 Soledad, Suite 300, San Antonio, Texas 78205

2. Appellee, the State of Texas is represented by NICHOLAS “NICO” LAHOOD, District Attorney and LAURA DURBIN, Assistant District Attorney, Paul Elizondo Tower, 101 W. Nueva Street, San Antonio, Texas 78205

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TO THE HONORABLE TEXAS COURT OF CRIMINAL APPEALS:

Now comes, Deondre Jenkins, by and through his attorney of record, Debra L. Parker, and files this Brief on the Merits on Petition for Discretionary Review.

STATEMENT OF THE CASE

Deondre Jenkins was convicted of continuously trafficking, for purposes of prostitution, B.H. and G.S. under TEX. PENAL CODE ANN. § 20A.03 under a document alleging to be an indictment which entirely failed to name the “person” charged with the offense. Trial counsel for Jenkins argued at trial that the indictment was defective, void and the trial court lacked jurisdiction over Jenkins because he was not named in the indictment.

Before the Fourth Court of Appeals, Jenkins argued that his conviction was void because the charging document failed to meet the first prong of the definition of an indictment as set forth in Tex. Const. art, V, §12(b). The charging instrument failed to invoke the jurisdiction of the court over Jenkins as he was not named in the document. In a published opinion the Fourth Court of Appeals reversed and remanded the case to the trial court with the directive to dismiss the indictment. *Jenkins v. State*, 537 S.W.3d. 696 (Tex. App.—San Antonio, 2017, pet. granted,).

The State filed a Petition for Discretionary Review on January 22, 2018. This Honorable Court granted the petition on April 18, 2018 and ordered briefing.

STATEMENT ON ORAL ARGUMENT

The State requested oral argument and was denied.

ISSUES PRESENTED

1. Does a charging instrument that does not identify the defendant by name, but which is preceded by a caption that does identify the defendant by name, meet the jurisdictional requirement that a charging instrument name a “person” as required by article V, §12(b) of the Texas Constitution?
2. Whether *Cook v. State* is outdated in light of *Teal v. State* and *Kirkpatrick v. State*?

STATEMENT OF FACTS

Jenkins does not disagree that the Statement of Facts prepared by the State is consistent with the testimony presented at trial.

SUMMARY OF THE ARGUMENT

Tex. Const. art V, §12(b) sets out the definition of a valid indictment in that it charges a “person” with an “offense”. Tex. Code P. Ann. Art 21.02 sets out the requisites of an indictment including that it shall begin “in the name and by authority of The State of Texas” and conclude with “against the peace and dignity of the State”. Nothing written on the page outside the commencement and conclusion of those words constitutes the indictment. Naming a “person” in the indictment confers *personal jurisdiction* of the court over the individual and naming the “offense” confers *subject matter jurisdiction* of the felony court.

Jenkins v. State, 537 S.W.3d 696 (Tex. App.—San Antonio, 2017) and *Cook v. State*, 902 S.W.2d 471 (Tex.Crim.App. 1995) should be upheld because without naming the person and acquiring personal jurisdiction over the individual the court with a valid indictment the court cannot proceed to the question in *Teal v. State*, 230 S.W.3d 172 (Tex. Crim. App. 2007) and *Kirkpatrick v. State*, 279 S.W.3d 324 (Tex. Crim. App. 2009). The question of whether the description of the offense charged is constitutionally valid, provides notice to the defendant of the charges, and invokes the subject matter jurisdiction of the court can never be decided under a constitutionally invalid indictment. The caption, not present on all indicting documents throughout the state of Texas is not part of the indictment and cannot be used to confer either *personal jurisdiction* or *subject matter jurisdiction* in an indictment. *Stansbury v. State*, 128 Tex. Crim. 570, 82 S.W.2d 962 (1935), *Thibodeaux v. State*, 628 S.W.2d. 485 (Tex. App. Texarkana 1982).

Cook should be upheld as it holds that the first prong of the Texas Constitutional definition of an indictment is necessary for a valid indictment. Failure to name the “person” fails to confer *personal jurisdiction* of the court upon the individual and cannot be waived as it is part of the constitutional definition of indictment. This court distinguished *Cook* from *Studer* by noting that art. V, § 12(b) eliminated the need for every element of the offense be included in the indictment; it is correspondingly obvious that that neither the Legislature nor the

voters meant to rescind the constitutional right to a charging document adequate to form an indictment. *Jenkins v. State*, 537 S.W.3d 696, 702 (Tex.App.—San Antonio, 2017 pet. granted); *Cook*, 902 S.W.2d at 478.

ARGUMENT

The document filed with the Bexar County District Clerk's office in 2014 CR 8396 in the 186th Judicial District Court of Bexar County and purported to be an indictment wholly failed to meet the first requirement of Texas Constitution art. V, § 12(b) in that it failed to name a person charged with an offense. The trial court never obtained personal jurisdiction over Mr. Jenkins. The caption used by Bexar County for clerical purposes is not part of the indictment.

The published opinion of the Fourth Court of Appeals, following the precedent established in *Cook v. State* should be affirmed.

1. *Standard of Review*

A point of error challenging the sufficiency of the indictment is a question of law and is subject to *de novo* review. *State v. Mott*, 154 S.W.3d 599, 601 (Tex.Crim.App. 2004); *Smith v. State*, 297, S.W.3d 260, 267 (Tex.Crim.App. 2009).

2. *The 1985 Amendments to the Texas Constitution*

The 1985 Amendment set out the constitutional definition of an indictment as a written document presented by a grand jury charging a “person” with committing an “offense”. *Cook v. State*, 902 S.W.2d at 477.

The additional effect of the amendment was to coincide with the amendment to Tex.Code Crim. Proc. Ann. Art. 1.14(b) requiring that defects or errors of form or substance in the indictment be brought to the Court’s attention prior to the beginning of trial or be waived. *Cook*, 902 S.W.2d at 476.

The amendment voted into the Texas Constitution in 1985, now requires that two prongs of the definition of an indictment be met in order for the document to be an indictment and invoke the jurisdiction of the trial court.

3. *Cook’s Assessment of the Amendment*

In *Cook*, the necessity of the first prong of the definition of an indictment under Tex. Const. ar. V, § 12(b) was examined. The first requirement of an indictment requires the naming of a person, invoking *personal jurisdiction* over the defendant. An indictment which wholly omits charging a person was not an indictment and cannot bestow the trial court’s jurisdiction. *Id.* at 478. The court in *Teal v. State* specifically stated that in *Cook* “no person” committed the offense and therefore the indictment was “fatally flawed” even while adopting the “whole indictment” test. *Teal v. State*, 230 S.W.3d 172, 179 (Tex.Crim.App. 2007). In

Cook and *Jenkins*, no person was charged in the document hence no one could comply with Tex.Code Crim. Proc. Ann art. 1.14(b) and bring the error to the trial court's attention prior to the commencement of trial. The court did not have jurisdiction over the individual as no individual was named in the indictment. This court stated that "a written instrument is an indictment or information under the Constitution if it accuses someone of a crime with enough clarity and specificity to identify the penal statute under which the State intends to prosecute, even if the instrument is otherwise defective. *Duron v. State*, 965 S.W.2d 547, 550-551 (Tex.Crim.App. 1997).

Without accusing a **person** the document is not a valid indictment and does not confer *personal jurisdiction* over the individual therefore the document alleging to be an indictment is void.

4. *Studer, Teal and Kirkpatrick and the "whole indictment" test*

Studer, Teal and Kirkpatrick examine deficiencies in the second prong of the definition, *subject matter jurisdiction*. *Studer* complained for the first time on appeal that the information charging him with indecent exposure failed to assert the acts relied upon to show "recklessness". *Studer v. State*, 799 S.W.2d 263, 265 (Tex.Crim.App. 1990). The court held that the defect in the *Studer* information was one of substance however, the document was sufficient to vest jurisdiction. *Studer*

waived his objection by failing to complain of the error prior to entry of his plea. *Id* at 273.

The court in *Teal* again addresses *subject matter* jurisdiction conferred by the indictment. “Constitutionally, district courts have jurisdiction over a felony when an indictment charging a person with an offense is signed by the grand jury foreman and presented to the district court.” *Teal v. State*, at 180-181. The “whole indictment” test set out in *Teal* refers specifically to *subject matter* jurisdiction, the second prong of the constitutional definition of an indictment. The opinion in *Teal*, characterized *Studer* and *Cook* as “book-end cases”, with *Cook* addressing *personal jurisdiction* and *Studer* *subject matter jurisdiction*. *Id* at 179. The court goes on to address whether the document charges the offense with sufficient specificity that *Teal* knew which offense he was being charged with. *Id* at 181-182. Ultimately, the court held that *Teal* failed to timely object to the *subject matter* jurisdiction of the trial court and therefore waived his complaint. *Id* at 182.

Kirkpatrick again addressed *subject matter* jurisdiction where the offense charged omitted elements resulting in a misdemeanor offense and not a felony offense. *Kirkpatrick v. State*, 279 S.W.3d 324, 328 (Tex.Crim.App. 2009). Again, the court held that errors in notice of the offense charged required objection prior to the commencement of trial. *Id.* at 329. *Studer*, *Teal* and *Kirkpatrick* all had valid

indictments charging a “person” with committing an “offense” unlike *Cook* and *Jenkins*.

If a document, signed by a grand jury foreman named a person but wholly and completely omitted the offense, not just elements but the whole offense, it would not meet the constitutional definition of an indictment. By completely and wholly omitting a prong required by the constitutional definition of what makes up an indictment the document is void. There is no indictment invoking jurisdiction over the individual or the court. The document is not an indictment consequently there is no “whole indictment” test to be performed by the examining court. This court in *Teal* recognized that the Texas Constitution requires the charging instrument charge a person with an offense and without both of these prongs the document is not an indictment and does not vest the district court with jurisdiction. *Jenkins*, 537 S.W.3d at 703; *Teal*, 230 S.W.3d at 179.

5. The Charging Instrument is not a constitutionally valid instrument

The document in *Jenkins* case purporting to charge him with an offense failed to assert a prong of the constitutionally mandated requirement for an indictment. It did not misspell a name. It did not allege the wrong name. It did not allege an incomplete name. It named no individual. It was void and not an indictment. *Cook*, 902 S.W.2d at 477; *Teal*, 230 S.W.3d at 180; *Duron*, 956

S.W.2d at 552. There is no “whole indictment” test to administer when there is no indictment.

To apply the “whole indictment” test the State urges this court to look to the caption utilized in Bexar County for clerical convenience. This caption is not universally utilized in all jurisdictions in Texas. The State is urging this court to consider making a document a valid indictment when the same document might fail meet the requirements of an indictment in another jurisdiction where the caption is not utilized. Courts have consistently held that the caption is not part of the indictment. *Stansbury v. State*, 128 Tex. Crim. 570, 82 S.W.2d 962, 964 (1935); *Thibodeaux v. State*, 628 S.W.2d 485, 487-488 (Texarkana 1982, no pet.); *Adams v. State*, 22 S.W.3d 37, 53 (Tex.App.—Austin, 2007, no pet.).

A description of “caption” is set out in *Jenkins* indicating that the “caption” is an insertion in the document made generally to assist court personnel. The “caption” appears before the commencement of first line of the indictment. *Jenkins*, 537 S.W.3d at 705. The caption is no part of the indictment proper. *Stansbury*, 82 S.W.2d at 964. *Gonzales v. State* held that captions and other identifying information are not part of the indictment. *Gonzales v. State*, 664 S.W.2d 797, 799 (Tex.App.—Corpus Christi 1984, *remanded for reconsideration on other grounds*. *Jenkins*, 537 S.W.3d at 705-706.

To consider the “whole indictment” test the court would need to consider the information within the “indictment” and not the caption. Article 21:02 of the Texas Code of Criminal Procedure sets out the adequacy of an indictment:

An indictment shall be deemed sufficient if it has the following requisites:

1. It shall commence, “In the name and by authority of The State of Texas”
2. It must appear that the same was presented in the district court of the county where the grand jury is in session,
3. It must appear to be the act of a grand jury of the proper county,
4. It must contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him,
5. It must show the place where the offense was committed is within the jurisdiction of the court in which the indictment is presented,
6. The time mentioned must be some date anterior to the presentment of the indictment, and not so remote that the prosecution of the offense is barred by limitation,
7. The offense must be set forth in plain and intelligible words,
8. The indictment must conclude, “Against the peace and dignity of the State”,
9. It shall be signed officially by the foreman of the grand jury.

The document in the instant case absolutely omitted the name of the accused.

Teal and *Kirkpatrick* can be distinguished from *Cook* in that they stand for errors or omissions in elements of the second prong of the definition of what constitutes an indictment. *Teal* and *Kirkpatrick* do not stand for allowing the indictment to completely eliminate the second prong and still consider the document a valid indictment. *Teal*, 230 S.W.3d at 179. The “whole indictment”

test fails if no valid indictment is before the court invoking personal jurisdiction over the individual accused.

The 1985 legislative amendments set out the constitutionally mandated definition of an indictment in harmony with the statutory requirement of 21.02 in that a name shall be in the indictment for it to be sufficient as an indictment.

The record fails to show that the grand jury returned an indictment with a name as the part of the document which comprises the indictment does not include a name. There is no indication in the record what the grand jury saw when considering and/or preparing the document filed in Jenkins case.

The record does not include a transcript of what the magistrate said to Jenkins.

Jenkins received a copy of the document alleging to be an indictment however there is no indication he knows the constitutional and statutory requirements of an indictment.

The motion to quash the indictment was filed *pro se* and therefore not considered by the court as Jenkins had counsel.

The entry of a plea of not guilty and testimony of witnesses does not cause a document which is void on its face as an indictment to transform into a charging instrument that bestows *personal jurisdiction*. Jenkins was arrested and

transported to court in handcuffs but those involuntary actions do not validate a void indictment.

The State confuses errors in charging the subject matter jurisdiction by omitting elements, but charging an offense, with the utter omission of the name of the accused in violation of the Texas Constitution and the statutes of the state of Texas. The complete omission of an offense would similarly render the indictment as void.

The actions of Jenkins or his counsel does not invoke *personal jurisdiction* over Jenkins when the omission of his name renders the document void.

The burden cannot be shifted to the defendant to prove he is the person charged. The document was invalid and failed to charge Jenkins or any other individual with the offense. The trial court never obtained jurisdiction over the matter as void document was presented to the court. The state cannot omit the person charged no more than they could fail to alleged an offense in its entirety and expect the document to constitute an indictment.

6. Jenkins did not waive error by failing to object pursuant to art.

1.14(b)

Cook held that the definition of an indictment is provided by art. V, § 12(b) of the Texas Constitution and does not allow the Legislature to statutorily alter the essential requirements of an indictment. *Cook*, 902 S.W.2d at 478. The Legislature

does not have authority to enact laws contrary to the Constitution. *Dendy v. State*, 142 Tex 460, 179 S.W.2d 269 (1944). If a law enacted by the Legislature attempts to invalidate a safeguard provided by the Constitution, the part that conflicts is void. *Cook*, 902 S.W.2d at 479.

We therefore hold that the definition of an indictment provided by art. V, § 12(b) establishes constitutional requisites for an indictment. Art. V, § 12(b) does not authorize the Legislature to statutorily change these fundamental requirements. See *Howerton*, 236 S.W.2d at 618; and *Dendy* 179 S.W.2d at 273. Accordingly, to constitute an indictment as required by art. I § 10 and art. V, § 12(b), a charging instrument must at least charge “a person,” with the commission of an offense. If the charging instrument fails to charge “a person” then it is not an indictment and does not vest the trial court with jurisdiction. Moreover, because a valid indictment is essential for jurisdiction, it is not subject to waiver. *Crawford*, 624 S.W.2d at 907; and *Lackey v. State*, 574 S.W.2d 97, 100 (Tex. Crim.App. 1978) *footnotes omitted*

Cook, Id at 479-480

A statutory requirement that a pre-trial objection to preserve a right guaranteed by the Constitution causes the statute to nullify the constitutional provision voted into law by the citizens of the state of Texas. To require a pretrial objection pursuant to a statute to a charging instrument that fails to comply with the constitutional requirement of an indictment would mean the Legislature provides a constitutional definition and then authorize itself to impose statutory rules to undercut the definition. *Id.* at 478. Contrasting *Studer*, *Teal* and *Kirkpatrick*, where an offense was charged in compliance with the constitutional requirement, a pre-trial objection was required to clarify any deficiencies in the elements of the

offense. If the deficiencies in the offense charged are not brought to the court's attention prior to trial the deficiency is waived.

When a constitutional requirement that a "person" be named and that requirement is entirely absent the protection provided by the Constitution is completely stripped away. The Legislature cannot proscribe a statute that nullifies a Constitutional prerequisite of an indictment. The court in *Cook* held that the constitutional requirements of a valid indictment are set out in V, § 12(b) and are not subject to waiver. *Id.* at 480.

The Legislature may not vitiate a constitutionally mandated requirement that an indictment charge a "person" with an "offense". To allow the complete omission of one prong of the indictment to be subject to statutory waiver would allow the Legislature to enact laws which eradicate the Constitutional amendment. Tex.Code Crim. Proc. Art. 1.14 allows a defendant to bring notice to the trial court of valid but defective indictments to the notice of the trial court and if not objected to prior to trial the defects are waived. Art. 1.14 does not apply to void indictments as in *Cook* and the instant case.

7. *Cook* stands for the holding that failure to allege one prong of the Constitutional requirement of an indictment renders the document void

Studer, Teal and *Kirkpatrick* hold that a defective indictment that meets both prongs of V, § 12(b) can invoke both the *personal* and *subject matter* jurisdiction of the Court. The right to object to the defective part of the indictment can be waived under Tex. Code of Crim.Proc Ann. Arts 1.14(b) and not brought to the attention of the trial court.

Conversely, failure to name a “person”, a necessary prong of the constitutional leads to a void document. The two requirements of V, § 12(b) are necessary to provide notice to the defendant and to vest the trial court with jurisdiction. *Cook*, 902 .W.2d at 475.

Studer, Teal, and *Kirkpatrick* indictments provide the name of a defendant and an offense; conversely *Cook* and *Jenkins* provide no name of a defendant. *Studer, Teal* and *Kirkpatrick* are distinguishable from *Cook* and *Jenkins* in that they all had valid indictments with both requirements of V, § 12(b). *Studer, Teal* and *Kirkpatrick* failed to bring deficits in the offense charged in the indictment in the indictment before trial. *Cook* and *Jenkins* were never properly before the court as jurisdiction had not attached due to a defective document alleging to be an indictment. The documents wholly failed to charge a “person” which is the first

prong of the constitutionally mandated definition of what constitutes an indictment. Every word in constitutional provision is recognized to have been judiciously chosen and should be given full credence. *Cook*, 902 S.W.2d at 478.

The intention of the amendment to the Texas Constitution was to set out the requisites of an indictment. To claim that the amendment to the Constitution and 1.14(b) of the Texas Code of Criminal Procedure allow documents to come before the court failing to name a defendant can evoke the jurisdiction of the court completely violates the will of the citizens of the state of Texas.

PRAYER FOR RELIEF

Appellant prays this Honorable Court affirm the court of appeals and remand this cause to the trial court with instructions to dismiss the indictment.

Respectfully submitted,



Debra L. Parker
111 Soledad, Suite 300
San Antonio, Texas 78205
Tel: (210) 822-0620
Fax: (210) 547-9579
DebraParkerLaw@gmail.com
State Bar No. 00794112
Attorney for Appellant
Deondre Javqueen Jenkins

CERTIFICATE OF COMPLIANCE and SERVICE

I, Debra L. Parker, hereby certify that the total number of words in this brief is 3,720. I also certify that a true and correct copy of this petition for discretionary review was emailed to Laura E. Durbin at laura.durbin@bexar.org, counsel for the State of Texas, Bexar County District Attorney and to Stacey Soule, State Prosecuting Attorney, at Stacey.Soule@SPA.texas.gov, on this the 2nd day of July, 2018.



Debra L. Parker
Attorney for
Deondre Javqueen Jenkins